



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,216	03/18/2004	A. Gary Bartel	1622	5838

7590 02/24/2006

Mark C. Jacobs, Esq.
3033 El Camino Avenue
Sacramento, CA 95821-6014

EXAMINER

DEVOTI, PAUL D

ART UNIT	PAPER NUMBER
----------	--------------

3637

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/803,216	Applicant(s) BARTEL, A. GARY	
	Examiner Paul Devoti	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03/18/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference Numbers 21 (page 6, line 3) and 36' (page 7, line 24). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Darling (US 5531048) in view of Lanphier (US 2004/0010987).
4. Regarding claims 1, 2, 4, 5, 8, 10, and 12, Darling discloses a stairway (10) with tread ends that simulate the appearance of an installed wood stair tread end, comprised of an upper section (54, improperly labeled as 56 in Figure 1) and lower section (52). The upper section (54) has inner and outer side edges and a front edge. The lower section (52) has a generally elongated rectangular section, and has a lateral extension less than the lateral extension of the upper section (54). Darling, however, does not disclose how the upper section and lower section are joined, where the rear surface of the upper section has a recess into which the lower section is disposed, or that the tread end edges are milled. Lanphier discloses a false tread module that may be machined (paragraph 0013) with an upper member (1, 2) having recess into which a lower member (4) fits. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to modify Darling's stairway to include milled end caps with upper and lower members that are joined by the lower member fitting into a recess of the upper member, as taught by Lanphier to securely join the upper and lower members.
5. Regarding claim 6, Darling in view of Lanphier discloses everything previously mentioned, including the end cap (54) has ends that are rounded (column 7, line 20).

Art Unit: 3637

6. Regarding claims 3 and 7, Darling in view of Lanphier discloses everything previously mentioned, including the end cap (54) is made of solid wood (column 7, line 17). Darling does not, however, disclose that it is made of a material selected from the group consisting of hardwood, softwood, molded plastic, and MDF. It would have been obvious to one having ordinary skill in the art at the time of invention to make the end cap of a material selected from the group consisting of hardwood, softwood, molded plastic, and MDF, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

7. Regarding claim 9, Darling in view of Lanphier discloses everything previously mentioned, including the upper section of the end cap (54) is made of wood (column 7, line 17).

8. Regarding claims 11, Darling in view of Lanphier discloses everything previously mentioned, including a vertically disposed filler strip (56, improperly referenced as 54 in Figure 1) installed between the lower section of a tread end and the next lower tread end's upper section.

9. Regarding claim 13, Darling in view of Lanphier discloses everything previously mentioned, but does not disclose the filler strip's (56) forward edge is installed in vertical alignment with the lower section's forward edge. It would have been obvious to one

Art Unit: 3637

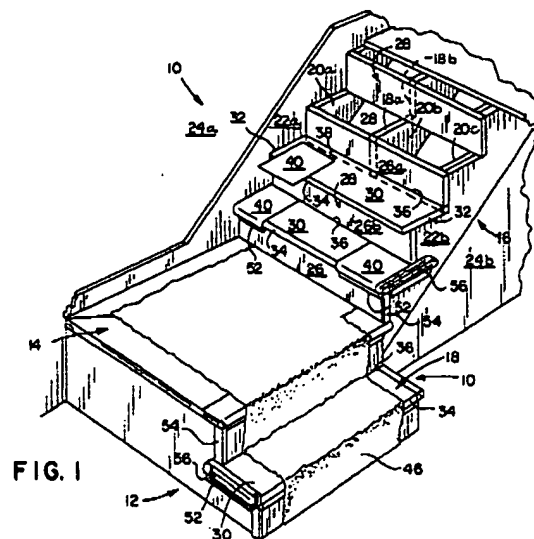
having ordinary skill in the art at the time of invention to install the filler strip (56) in vertical alignment with the lower section's forward edge, since it has been held that the rearranging of parts of an invention involves only routine skill in the art.

10. Regarding claims 14 and 15, in view of Lanphier Darling discloses everything previously mentioned, but does not disclose the filler strip (56) is made of wood or a material other than hardwood. It would have been obvious to one having ordinary skill in the art at the time of invention to make the filler strip (56) of wood or a material other than hardwood, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

11. Regarding claim 16, Darling in view of Lanphier discloses everything previously mentioned, but does not disclose the risers and treads are made of Medium Density Fiberboard, MDF, and the tread ends are made of hardwood. It would have been obvious to one having ordinary skill in the art at the time of invention to make the risers and treads of MDF and the tread ends of hardwood, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

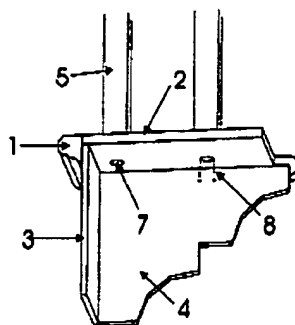
Art Unit: 3637

12. Regarding claim 17, Darling in view of Lanphier discloses everything previously mentioned, including the treads (30) and risers (26) of the stairway are covered with carpet (46).



Darling (US 5531048) Figure 1

Fig. 2



Lanphier (US 2004/0010987) Figure 2

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Young (US 4730425) discloses a stair tread end for use on an open stairway. Schmidt (US 5123210) discloses a flight of stairs with vertically oriented filler strips between the ends of stair treads. Bateson et al. (US 1954722) discloses a stairway with stair tread ends that extend over the stringer. Ballenger (US 1475777) discloses a staircase with stair tread ends that extend over the stringer. Lanphier (US 6125598) discloses a staircase with a groove into which carpet fits.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Devoti whose telephone number is 571-272-2733. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PD *PD*
02/16/06

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

